

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES D. SUTLER)	
Claimant)	
VS.)	
)	
MULTIFOODS/BEST BRANDS CORP./IMCB CORP.)	Docket No. 1,023,406
Respondent)	
AND)	
)	
TRAVELERS INDEMNITY COMPANY OF AMERICA)	
Insurance Carrier)	

ORDER

Respondent appeals the July 28, 2005 preliminary hearing Order of Administrative Law Judge Steven J. Howard. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined that claimant had proven that he suffered accidental injury arising out of and in the course of his employment and that he had provided timely notice of accident to respondent.

ISSUES

- (1) Did claimant suffer accidental injury arising out of and in the course of his employment on the dates alleged?
- (2) Did claimant provide timely notice of accident pursuant to K.S.A. 44-520?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be affirmed.

Claimant began working for respondent in November of 2004 as a machine operator and hand dump operator. Claimant testified he spent four hours on the machine and

four hours on hand dump. The hand dump job required claimant to handle bags ranging from 25 to 70 pounds. In February of 2005, claimant's job changed and he began performing the hand dump job three and four days at a time. Claimant testified that his back started hurting, with the back pain worse during the week and better over the weekend. He was also developing leg pain. Claimant told his supervisor, Don, every few days that he was having difficulties, although claimant acknowledged he did not ask for medical treatment, nor for workers compensation benefits. Claimant also testified to discussing his problem with Bea Ludwig, respondent's human resources manager. Ms. Ludwig, who testified at preliminary hearing, acknowledged having several conversations with claimant regarding his condition, whether or not it was work related. She testified claimant gave vague answers. She also said that claimant told her he did not know how it happened. Claimant acknowledged he was uncertain about the leg and back problems, although he did testify that the condition was worse during the week and better over the weekend.

Claimant last worked for respondent on March 14, 2005. On or shortly after March 15, 2005, claimant began receiving benefits for short-term disability. Claimant did not file for workers compensation benefits. Claimant obtained medical care through several doctors, including Family Medicine Specialists (FMS) on March 29, 2005, at which time claimant advised the nurse at FMS that his "body aches all over."

Claimant underwent an MRI at Providence Medical Center (Providence) on April 1, 2005, for low back pain. Claimant advised the personnel at Providence that he had suffered back pain since March 15 or 16, 2005, but denied any accident.

Claimant filed the formal workers compensation claim on May 23, 2005, well beyond the ten-day limit set forth in K.S.A. 44-520.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.¹

Claimant's testimony regarding how the accident happened is uncontradicted. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy.²

K.S.A. 44-520 requires that notice be provided to the employer within ten days of the accident. In this instance, claimant testified to talking to his supervisor, Don, every few days about his worsening problem. While it does not appear from this record that claimant

¹ K.S.A. 44-501 and K.S.A. 2004 Supp. 44-508(g).

² *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

specifically requested workers compensation benefits, a relationship between claimant's work duties and his developing back problems was evident. Additionally, claimant discussed with respondent's human resources manager, Ms. Ludwig, on numerous occasions the fact that he was having difficulties. Ms. Ludwig acknowledged asking claimant if he wanted to file a workers compensation claim, but testified to receiving only vague answers. The Board finds, although by the slimmest of margins, that claimant has satisfied the requirements of K.S.A. 44-520 in providing notice to respondent of his ongoing accident and injuries. The Board, therefore, finds that the Order of the ALJ granting claimant benefits, after finding that he suffered accidental injury arising out of and in the course of his employment and that he provided timely notice of accident, should be affirmed.

As is always the case, these findings are not binding upon a full hearing on the claim but shall be subject to a full presentation of the facts.³

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Steven J. Howard dated July 28, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November, 2005.

BOARD MEMBER

c: Michael R. Wallace, Attorney for Claimant
Bryce B. Moore, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ K.S.A. 44-534a(a)(2).